

HOUSE BILL REPORT

SHB 1327

As Passed House:
March 7, 2013

Title: An act relating to licensing and enforcement provisions applicable to money transmitters.

Brief Description: Addressing licensing and enforcement provisions applicable to money transmitters.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Kirby, Ryu and Santos; by request of Department of Financial Institutions).

Brief History:

Committee Activity:

Business & Financial Services: 1/29/13, 1/30/13, 2/13/13 [DPS].

Floor Activity:

Passed House: 3/7/13, 97-0.

Brief Summary of Substitute Bill

- Requires fingerprinting for a state and national criminal background check of officers, directors, and owners of money services license applicants. There is an exemption for officers, directors, and owners of publicly traded entities.
- Modifies several definitions in the Money Services Act.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Kirby, Chair; Ryu, Vice Chair; Parker, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Blake, Chandler, Habib, Hawkins, Hudgins, Hurst, Kochmar, MacEwen, O'Ban, Santos and Stanford.

Staff: Jon Hedegard (786-7127).

Background:

The Department of Financial Institutions (DFI) regulates the money transmission and currency exchange businesses (collectively referred to as money services) under the Uniform

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Money Services Act (Act). The act states that it is "the intent of the legislature to establish a state system of licensure and regulation to ensure the safe and sound operation of money transmission and currency exchange businesses, to ensure that these businesses are not used for criminal purposes, to promote confidence in the state's financial system, and to protect the public interest."

Money transmission is the receipt of money for the purpose of transmitting or delivering the money to another location, whether inside or outside the United States. The transmission/delivery of the money can take place by any means, including wire, facsimile, or electronic transfer.

Currency exchange is the exchange of the money of one government for the money of another government, or holding oneself out as being able to complete such an exchange. Various types of businesses are exempted from the definition.

Generally.

Money transmitters and currency exchangers must meet licensing requirements that are largely identical. However, money transmitters are subject to bonding and net worth requirements not applicable to currency exchangers. Also, currency exchangers do not need a license if total business revenues obtained from currency exchange do not exceed 5 percent.

Money Transmitter License Application.

An application for a money transmitter license must contain specified information, including:

- a 10-year employment history of the designated responsible individual;
- a list of any criminal convictions sustained by the responsible individual during the preceding 10 years;
- documentation that the proposed responsible individual either is a citizen of the United States or has the necessary legal work status as an immigrant;
- a list of the authorized delegates;
- a description of the source of the money or credit to be used in conducting the business;
- a description of any licensing problems in other states involving the responsible individual;
- information regarding any bankruptcy or receivership affecting the responsible individual;
- if the applicant is a business entity, specific additional information about the entity;
- and
- any other information required by the DFI by rule.

Prior to issuing a license, the Director of the DFI (Director):

- must examine the applicant's background, financial profile, experience, competence, character, and general fitness;
- must determine that the applicant and its proposed employees are not listed by the federal government as persons who pose a potential threat of committing terrorist acts or financing terrorist acts,
- may request background information including fingerprints of the responsible person for the applicant. The responsible person is the individual with principal managerial authority over money services in Washington; and

- may request the fingerprints of each executive officer, board director, or person that has control of the applicant. This does not apply if the applicant or its corporate parent is a publicly traded entity.

Exemptions.

Certain entities are specifically exempted from the Act:

- governmental entities and agents, and those contracted to provide money services on behalf of governmental entities;
- the United States Postal Service;
- financial institutions and corporations organized under specified federal acts;
- federally regulated boards of trade;
- federally registered futures commission merchants;
- operators of payment systems that provide services to other exempted entities, with respect to wire transfers, credit cards, debit cards, etc.;
- registered securities broker-dealers;
- state licensed insurance companies, title insurance companies, or escrow agents; and
- certain persons involved in connection with the issuance, sale, use, redemption, or exchange of stored value or payment instruments.

The Director may waive the licensing provisions of the Act when the Director determines it necessary to facilitate commerce and protect consumers.

Prohibited Practices.

It is a violation of the Act for a money services provider or an employee to engage in specified prohibited practices, including:

- engaging in trade practices that are unfair or deceptive, including bait and switch advertising or sales practices;
- committing fraud or misrepresentation;
- creating false or deceptive documents or records; and
- failing to file reports or records required by law.

Money Laundering and Governmental Reporting Requirements.

A money services licensee must comply with:

- money laundering laws;
- record keeping laws; and
- suspicious transaction reporting requirements.

Financial Requirements.

Money transmitters are required to maintain a:

- surety bond, or other acceptable security;
- a portfolio of permissible investments; and
- a tangible net worth, set in rule, of at least \$10,000 but not exceeding \$3 million.

Authority of the Director.

The Director may examine and investigate money service provider licensees. The Director may take a wide range of regulatory actions for violations of the Act or rules to implement the Act. The Director may adopt rules to implement the Act. There are criminal penalties for certain violations of the Act.

Background Checks for Financial Professionals.

A variety of financial professionals are required by state or federal law to undergo a background check, including fingerprinting. This group includes people who work at banks, credit unions, consumer loan companies, escrow agents, mortgage brokers, and insurance producers.

Summary of Substitute Bill:

Several definitions are modified and language throughout the Act is conformed to those changed definitions.

At the time of application for an initial license and upon license renewal, an applicant must provide identifying information, including fingerprints, to the DFI regarding each applicant's:

- officers;
- directors; and
- owners.

The officers, directors, and owners of an applicant are subject to a state and national criminal background check unless the applicant or its corporate parent is a publicly traded entity. The DFI can only disseminate this background information to criminal justice agencies.

A licensee must provide contact information for all persons that are authorize to provide money services on behalf of the licensee.

The Director is expressly given the authority and administrative discretion to administer and interpret the Act to fulfill the stated intent of the Legislature.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill is very carefully crafted to provide more oversight of these businesses. The DFI has worked with interested members and stakeholders for months on the issues addressed in this bill. The definition of money transmitter is broad. It includes a number of payment systems. The accounts of money transmitters are given additional scrutiny under federal law. Small money transmitters may have trouble finding a financial institution that is willing to endure the regulatory burdens. The DFI has worked with these small money transmitters to try to resolve these problems. Requiring more thorough background checks may reassure financial institutions and encourage those financial institutions to provide banking services to the smaller money transmitters. The stakeholders are generally subject to these background checks in other states and do not find these requirements a burden. There are a few issues that are still being discussed with stakeholders.

(Opposed) None.

Persons Testifying: Representative Kirby, prime sponsor; and Deb Bortner, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: None.